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SUBJECT: ROMANIA: INVESTMENT CLIMATE STATEMENT, 2009

REF: 08 STATE 123907

¶1. Following is Embassy Bucharest's submission for the 2009 Investment Climate Statement.

¶A. OPENNESS TO FOREIGN INVESTMENT

ENCOURAGING INVESTMENT

Romania actively seeks direct foreign investment. The Agency for Foreign Investment (ARIS), created in 2004, is designed to advertise the country as a good investment destination and to improve aspects of the business climate. Romania's marketplace of 21.6 million consumers, a well-educated workforce, geographic location, and abundant natural resources make it an increasingly attractive destination for investment. To date, favored areas for American investment include IT and telecommunications, services, manufacturing, and consumer products.

Romania has taken steps to strengthen tax administration, enhance transparency, and create legal means to resolve contract disputes expeditiously. Mergers and acquisitions are subject to review by the Competition Council. Romania's accession to the European Union on January 1, 2007 has helped solidify institutional reform. However, judicial and legislative unpredictability continues to affect the investment climate. Prospective U.S. investors should exercise careful due diligence, including consultation with competent legal counsel, when considering any investment.

U.S. companies establish a local presence in the Romanian market in several forms. Many form distribution agreements with a local Romanian firm who brings experience, expertise and access to the partnership. Other firms cover Romania from a distributor or sales representative in the region. Still other American companies choose Romania as a base of manufacturing or distribution and establish a subsidiary. The choice of strategy depends on the industry, the nature of the customer (government buyer or retail trade), and the business case. Companies that rely on regular access to the Government of Romania, or have a significant service component, generally seek to establish a subsidiary, sometimes through acquisitions.

Investments that involve the public authorities (central government ministries, county governments, and city administrations) are generally more complicated than investments or joint ventures with private Romanian companies. Large deals involving the government - particularly public-private partnerships and privatizations of key state-owned enterprises - can become stymied by vested political and economic interests or bogged down due to a lack of coordination among governmental ministries. Investors have generally encountered greater success with less complex deals involving small- to medium-sized private and state enterprises.

EU ACCESSION

Romania became a member of the European Union on January 1, 2007. The country has worked assiduously to create a legal framework consistent with a market economy and investment promotion, and has largely concluded its efforts to enact EU-compatible legislation. At the same time, implementation of these regulations sometimes lags. The U.S. Department of Commerce recognized Romania as a market economy for anti-dumping investigation purposes beginning in March 2003.

LEGAL FRAMEWORK

Romania's legal framework for foreign investment is encompassed within a substantial body of law, largely enacted in the late 1990s and subject to frequent revision since. Investors are strongly encouraged to engage local counsel to navigate through the various laws, decrees, and regulations.

This body of legislation and regulation provides national treatment for foreign investors, guarantees free access to domestic markets, and allows foreign investors to participate in privatizations. There is no limit on foreign participation in commercial enterprises. Foreign investors are entitled to establish wholly foreign-owned enterprises in Romania (although joint ventures are more typical) and to convert and repatriate 100 percent of after-tax profits. Foreign firms are allowed to participate in the management and administration of the investment, as well as to assign their contractual obligations and rights to other Romanian or foreign investors.

Foreign investors may engage in business activities in Romania by any of the following methods:

-- Setting up new commercial companies, subsidiaries or branches, either wholly owned or in partnership with Romanian natural or legal persons;
-- Participating in the increase of capital of an existing company or the acquisition of shares, bonds, or other securities of such companies;
-- Acquiring concessions, leases or agreements to manage economic activities, public services, or the production of subsidiaries belonging to commercial companies or state-owned public corporations;
-- Acquiring ownership rights over non-residential real estate improvements, including land, via establishment of a Romanian company;
-- Acquiring industrial or other intellectual property rights;
-- Concluding exploration and production-sharing agreements related to the development of natural resources.

Foreign investor participation can take the form of: foreign capital, equipment, means of transport, spare parts and other goods, services, intellectual property rights, technical know-how and management expertise, or proceeds and profits from other businesses carried out in Romania. Foreign investment must comply with environmental protection, national security, defense, public order, and public health interests and regulations.

There have been few hostile take-over attempts reported in Romania, and as a result Romanian law has not focused on limiting potential mergers or acquisitions. There are no Romanian laws prohibiting or restricting private firms' free association with foreign investors.

PRIVATIZATION

The State Asset Resolution Authority (AVAS) is charged with privatizing state-owned industrial and energy assets and managing these assets in the interim period before a privatization is finalized. The law on privatization permits the responsible authority to hire an agent to handle the entire privatization process, though ultimate decision-making authority remains with the government.

Major energy sector privatization was largely stalled in 2008, although the state-owned hydro power producer, Hidroelectrica, is making progress in selling off micro hydropower plants. The company sold 33 micro hydro power plants, worth 39 million Euros, to foreign and Romanian investors in 2008.

Prospective investors are strongly advised to conduct thorough due diligence before any acquisition, particularly of state-owned assets. Some firms have found it advantageous to purchase industrial assets through AVAS' budget arrears recovery process rather than through direct privatization. When utilized, this method may avoid assuming historical debt or encumbering labor agreements. As a member of the European Union, Romania is required to notify the European Commission's General Directorate for Competition regarding significant privatizations and related state aid. Prospective investors should ascertain whether such an obligation exists, and ensure compliance by relevant government entities. GOR failure to notify the European Commission properly has resulted in delays and complications in some past privatizations. Some investors have also experienced problems due to the occasional failure of GOR entities to fully honor contractual obligations following conclusion of privatization agreements.

Romanian law allows for the inclusion of confidential clauses in privatization and public-private partnership contracts to protect business proprietary and other information. However, in certain high-profile privatizations, Parliamentary action has compelled the opening up of such provisions.

PROPERTY AND CONTRACTUAL RIGHTS

Property and contractual rights are recognized, but enforcement through the judicial process can be difficult, costly, and lengthy. Foreign companies engaged in trade or investment in Romania often express concern regarding Romanian courts' lack of expertise in commercial issues. Judges generally have little experience in the functioning of a market economy, international business methods, intellectual property rights, or the application of Romanian commercial and competition laws. Even when court judgments are favorable, enforcement of judgments is inconsistent and can require further lengthy appeals.

¶B. CONVERSION AND TRANSFER POLICIES

Romanian legislation does not restrict the conversion or transfer of funds associated with direct investment. All profits made by

foreign investors in Romania may be converted into another currency and transferred abroad at the market exchange rate after payment of taxes.

Romania's national currency, the Leu, is freely convertible on current-account transactions, in accordance with the International Monetary Fund's (IMF) Article VII. Proceeds from the sale of shares, bonds, or other securities, as well as from the conclusion of an investment, can also be repatriated. There is no limitation on the inflow or outflow of funds for remittances of profits, debt service, capital gains, returns on intellectual property, or imported inputs.

In 1997, the Romanian government implemented new regulations that liberalized foreign exchange markets. The inter-bank electronic settlement system became fully operational in 2006, eliminating past procedural delays in processing capital outflows. Commission fees for real-time electronic banking settlements have gradually been reduced.

Capital inflows are free from restraint. Previous restrictions on the opening of Leu deposits by non-residents have been lifted. Romania concluded capital account liberalization in September 2006 with the decision to permit non-residents and residents abroad to purchase derivatives, treasury bills and other monetary instruments.

¶C. EXPROPRIATION AND COMPENSATION

The law on direct investment includes a guarantee against nationalization and expropriation or other equivalent actions. The law allows investors to select the court or arbitration body of their choice to settle potential litigation. Five cases against Romania are pending with the International Center for Settlement of Investment Disputes (ICSID). Several cases involving property nationalized during the communist era also remain unresolved.

¶D. DISPUTE SETTLEMENT

ARBITRATION

Romania recognizes the importance of arbitration in the settlement of commercial disputes. Many agreements involving international companies and Romanian counterparts provide for the resolution of disputes through third-party arbitration. Romania is a signatory to the New York Convention of 1958 regarding the recognition and execution of foreign arbitration awards. Romania is also a party to the European convention on international commercial arbitration concluded in Geneva in 1961 and is a member of the International Center for the Settlement of Investment Disputes (ICSID).

Romanian law and practice recognize applications to other internationally-known arbitration institutions, such as the ICC Paris Court of Arbitration and the Vienna United Nations Commission on International Trade Law (UNCITRAL). Romania also has an International Commerce Arbitration Court administered by the Chamber of Commerce and Industry of Romania. Arbitration awards are enforceable through Romanian courts under circumstances similar to those in other Western countries, although legal proceedings can be protracted.

MEDIATION:

Mediation as a tool to resolve disputes is becoming more common in Romania. Mediation became a legal profession in 2006 when the Romanian Parliament passed legislation recognizing it and establishing a certifying body, The Mediation Council, to set standards and practices. The professional association, The Union of Mediation Centers in Romanian, is the umbrella organization for mediators throughout the county. There are recognized mediation centers in every county capital where court-sanctioned and private mediation is available.

There is no court-ordered mediation but judges can encourage litigants to use mediation to resolve their cases. If litigants opt for mediation, upon completion of the mediation process, they must present their proposed resolution to the judge who must approve the agreement.

The Union of Mediation Centers is a member of the European Mediation Network Initiative and is recognized by the European Union and other regional bodies.

BANKRUPTCY

Romania's bankruptcy law contains provisions for liquidation and reorganization that are generally consistent with Western legal

standards. These laws usually emphasize enterprise restructuring and job preservation. Legal and economic education and the training of judges and lawyers lag behind law-making, which often results in inconsistent outcomes. To mitigate the time and financial costs of bankruptcies, Romanian legislation provides for administrative liquidation as an alternative to bankruptcy. However, investors and creditors have complained that the liquidators sometimes lack the incentive to expedite liquidation proceedings, and that, in some cases, their decisions have served vested outside interests. Both state-owned and private companies tend to opt for judicial reorganization to avoid bankruptcy.

¶E. PERFORMANCE REQUIREMENTS/INCENTIVES

INCENTIVES

Currently, customs and tax incentives are available for investors in six free trade zones and 36 regions of the country designated as economically disadvantaged. State aid is available for investments in free trade zones under EU regional development assistance rules. Large companies may receive aid equivalent to up to 50 percent of their eligible costs (limited to 40 percent in Bucharest and surrounding Ilfov county), while small- and medium-sized enterprises (SMEs) may receive assistance with up to 65 percent of their eligible costs. Prospective investors are advised to investigate thoroughly the current status of fiscal incentives.

In 2007 Romania adopted European Union regulations on regional investment aid and instituted state aid schemes for large investments. To benefit from state aid under these schemes, the applicant must secure financing for at least 25 percent of the eligible costs, either through its own resources or by external financing, in a form which is free of any public support. The applicant must document this financing in strict accordance with Ministry of Finance guidelines. In practice, unfortunately, GOR budget constraints and a less than fully transparent application process have limited access to these forms of state aid.

To reduce initial startup costs, a system of industrial parks and technological parks is being created. Tax incentives are available under the law for the industrial park operator, while companies that establish themselves in the park benefit from access to utility hookups and infrastructure, and to potential local tax rebates under regional development aid schemes. According to the Agency for Foreign Investment, there were 54 industrial parks throughout Romania as of December 2008.

As a member of the European Union, Romania must receive European Commission approval for any state aid it grants which is not covered by the EU's block exemption regulations. The Romanian Competition Council acts as a clearinghouse for the exchange of information between the Romanian authorities and the European Commission. Specifically, the Council screens the state aid notifications and provides an initial opinion to the state aid grantor as to whether the request is consistent with EU directives, allowing for an opportunity to revise or withdraw a request before it is submitted to the Commission. Even after submission, the Council retains jurisdiction over competition and antitrust matters. The failure of state aid grantors to notify the Commission properly on aid associated with privatizations has resulted in the Commission launching formal investigations into several privatizations. Investors should ensure that government entities with which they work fully understand and fulfill their duty to notify competition authorities. Investors may wish to consult with EU and Romanian competition authorities in advance to ensure a proper understanding of notification requirements.

TAX SYSTEM

Since 1999, Romania has revised its tax system to bring it closer both to EU models and to the recommendations of the World Bank and IMF. In 2004, Romania adopted a flat tax of 16 percent on personal income and corporate profits, and simplified the tax code. The government has also reformed the tax code to encourage economic growth and foreign investment. It reduced employers' payroll taxes by two percent in 2007 and by an additional six percent in three stages in 2008. However, even after these cuts, Romania's aggregate 39.85 percent payroll tax (at the end of 2008) remains a burden, leading some parties to support efforts to reduce it by an additional two percent in 2009. Romania has a 19 percent value added tax (VAT). Investors should be aware that, due to budget constraints, the GOR has occasionally withheld VAT reimbursements due to foreign companies for extended periods. The country is fully integrated into EU customs and excise tax systems, and is scheduled to be fully integrated into EU VAT transfer systems by 2009. The new coalition government, which took office in late December 2008, has announced that it will keep the flat tax unchanged.

TARIFF PREFERENCES

Upon EU accession, Romania implemented the EU Common Customs Tariff, the Generalized Preference Scheme, EU commercial safeguards, preference agreements and cooperation agreements concluded by the EU with third countries, as well as other EU commercial commitments vis-`-vis the WTO.

¶F. RIGHT TO PRIVATE OWNERSHIP; ESTABLISHING FIRMS

The Romanian Constitution, adopted in December 1991 and revised in 2003, guarantees the right to ownership of private property. Mineral and air rights, and similar rights are excluded from private ownership. Under the revised Constitution, foreign citizens can gain land ownership through inheritance. With EU accession, citizens of EU member states can now own land in Romania subject to reciprocity in their home country.

Companies having foreign capital may acquire land or property necessary for fulfilling or developing the company's corporate goals. If the company is dissolved or liquidated, the land must be sold within one year of the company's closure and may only be legally sold to a buyer(s) with the legal right to purchase such assets. For a transition period of seven years after Romania's accession to the EU, foreign investors cannot purchase agricultural land or forests and forestry land (except for farmers acting as commercial entities). Investors can purchase shares in agricultural companies that can lease land in the public domain from the State Land Agency.

¶G. PROTECTION OF PRIVATE PROPERTY RIGHTS

MORTGAGES

In early 2006, the Parliament passed a legislative package that regulates the establishment of specialized mortgage banks, including the possibility of transforming existing non-banking mortgage credit institutions into specialized mortgage banks. The law also makes possible a secondary mortgage market by regulating mortgage bond issuance mechanisms. Currently, mortgage lending is offered by commercial banks, specialized mortgage banks, and non-bank mortgage credit institutions. With the 2006 privatization of the Romanian Commercial Bank (BCR), Romania's mortgage market is almost entirely private (the state-owned National Savings Bank, or CEC, also offers mortgage loans). The primary market demonstrated robust growth until the third quarter of 2008, when credit tightened in response to the international financial crisis and the implementation of much stricter national regulations on borrower qualifications. Standard bank loans currently charge interest of around 15 percent APY on Leu loans for an initial fixed term (of one, two, or five years), followed by a variable interest rate for the life of the loan. Variable rates are typically pegged to the six-month ROBOR (Romanian inter-bank) rate (currently around 16.3 percent) plus a fixed spread. Euro-denominated loans currently offer interest rates of approximately seven percent APY for the first two years, with subsequent variable rates linked to the six-month EURIBOR (European inter-bank) rate. Due to the financial crisis, however, many banks have restricted euro-denominated lending.

INTELLECTUAL PROPERTY RIGHTS

Romania is a signatory to international conventions concerning intellectual property rights (IPR), including TRIPS, and has enacted legislation protecting patents, trademarks, and copyrights. Romania signed the Internet Convention to protect online authorship. While the IPR legal framework is generally good, enforcement in some areas remains weak and ineffectual. The flagrant trade of retail pirated goods has largely been eliminated, but personal use of pirated products and software remains high. The recording, video, and software industries have expressed concerns over increasing levels of Internet-based piracy of electronic media. Romania has passed border IPR control enforcement provisions as required under the WTO, yet judicial enforcement is lax.

PATENTS

Romania is a party to the Paris Convention for the protection of industrial property and subscribes to all of its amendments. Romanian patent legislation generally meets international standards,

with foreign investors accorded equal treatment with Romanian citizens under the law. Patents are valid for 20 years. Romania has been a member of the European Patent Protection Convention since ¶2002.

TRADEMARKS

In 1998, Romania passed a law on trademarks and geographic indicators which is generally consistent with international standards. Areas that require improvement are in administrative procedures and sanctions. Romania is a signatory to the Madrid Agreement relating to the international registration of trademarks and the Geneva Treaty on Trademarks. Trademark registrations are valid for ten years from the date of application and renewable for similar periods. In 2007, Romania ratified the Singapore Treaty on trademarks registration.

COPYRIGHTS

Romania is a member of the Bern Convention on Copyrights. Its 1996 law on the protection of copyrights and neighboring rights is among the most modern in this field. The Romanian Parliament ratified the latest versions of the Bern and Rome conventions. The Romanian Copyright Office (ORDA) was established in 1997 and ostensibly oversees copyright enforcement. However, copyright law enforcement is often a low priority for Romanian prosecutors and judges. Some magistrates still tend to view copyright piracy as a "victimless crime," particularly if affected copyright holders are not Romanian citizens. This attitude, coupled with a lack of resources, has resulted in weak enforcement of copyright law. Copyright infringement in software, music, and video is prevalent throughout Romania. Although they have declined over the past few years, piracy rates remained high over the last year largely due to widespread cyber-piracy. The latest industry estimates of piracy rates by sector are: 68 percent of business software, 89 percent of entertainment software, 65 percent of music, and 55 percent of video.

SEMICONDUCTOR CHIP LAYOUT DESIGN

Romanian law protects semiconductor chip layout design. In order to benefit, designs must be registered with the Romanian Trademark Office. Romania is a signatory to the Washington Treaty.

¶H. TRANSPARENCY OF THE REGULATORY SYSTEM

Cumbersome and non-transparent bureaucratic procedures are a major problem in Romania. Foreign investors point to the excessive time it takes to secure necessary zoning permits, environmental approvals, property titles, licenses, and utility hook-ups. Romania enacted a "Silent Approval" Law in 2003 to reduce bureaucratic delays, but it has yet to be universally enforced or recognized. Furthermore, regulations change frequently, often without advance notice, and are often vaguely worded and poorly explained. These changes, which can significantly add to the costs of doing business, can complicate investors' business plans.

Romanian law requires consultations and a 30-day comment period on legislation affecting the business environment (the Sunshine Law). However, not all ministries adhere to this requirement.

State aid legislation and EU state aid regulations (directly applicable to Romania after January 1, 2007) aim to limit state aid in any form, such as direct state subsidies, debt rescheduling schemes, debt for equity swaps, or discounted land prices. As noted above, the European Commission must be notified of and approve state aid granted by Romania above a certain monetary threshold that does not correspond to pre-approved categories of aid.

¶I. EFFICIENT CAPITAL MARKET AND PORTFOLIO INVESTMENT

CAPITAL MARKETS

Romania seeks to develop efficient capital markets. The National

Securities Commission (CNVM) is charged with regulating the securities market in order to protect investors. The process provides for the registration and licensing of brokers and financial intermediaries, filing and approval of prospectuses, and approval of market mechanisms.

On November 20, 1995, the Bucharest Stock Exchange (BVB) conducted its first transactions after a hiatus of 50 years. The BVB operates a three-tier system that, at present, lists a total of 67 companies, with 20 companies in the highest tier. The official index, BET, is based on a basket of the 10 most active stocks listed on the first tier. The BVB also has a RASDAQ (OTC) market segment that currently lists 1,763 different stocks. The BVB additionally allows trades in corporate, municipal bonds, and international bonds. Beginning in 2007, the BVB opened derivatives trading.

Despite lower trading fees and a diversified securities listing, the situation on the international capital and financial markets has adversely affected the Romanian capital market. Country funds, hedge funds and venture capital funds continue to participate in the

capital markets, yet on a decreasing scale.

Minority shareholders have the right to participate in any capital increase. The Romanian capital market regulation is now EU-consistent, with accounting regulations reflecting EC Directives IV and VII.

BANKING SECTOR

In 2006, the GOR concluded the privatization of Romania's largest bank, Romanian Commercial Bank (BCR), to Erste Bank of Austria. After BCR, of the 42 banks and credit cooperative unions operating in Romania, the French-owned Romanian Bank for Development (BRD-Societe Generale) is the second largest bank with 15 percent market share, followed by Austrian-owned Volksbank (6.31 percent) and Raiffeisen Bank (6.11 percent). Other large banks include the domestically-owned Banca Transilvania (5.54 percent) and Italian UniCredit Tiriac (5.4 percent).

According to the Romanian Central Bank, overdue and legally disputed loans now amount to 0.24% of total attracted and borrowed sources, this accounts for 0.22 percent of total banking assets and 2.36 percent of the banks' own capital.

The GOR actively encourages foreign investment in the banking sector, and there are no restrictions on mergers and acquisitions. The only remaining state-owned bank is the National Savings Bank (CEC), with a market share of 4.39 percent.

While Romania's Central Bank must approve the operation of all new non-EU banking entities in the country, those banks and non-banking financial institutions with existing operating approval in other EU countries need merely notify the Central Bank of plans to provide local services.

¶J. POLITICAL VIOLENCE

There have been no reported incidents in Romania involving politically motivated damage to foreign investments (projects and/or installations). Major civil disturbances are not expected to occur in Romania in the near future.

¶K. CORRUPTION

Despite some improvements, corruption remains a serious problem. Romania and Bulgaria had the lowest rankings among EU member states in Transparency International's (TI) 2008 Corruption Perception Index. TI's 2007 report on judicial corruption pointed to poor judicial decision making and weak ethical values.

U.S. investors have complained of government and business corruption in Romania, with the customs service, municipal zoning offices and local financial authorities most frequently named. In some cases, demands for payoffs by low- to mid-level officials reach the point

of harassment.

Romanian law and regulations contain provisions intended to prevent corruption, but enforcement is generally weak. Corruption is currently punishable under a variety of statutes in the penal code. Prison sentences are sometimes imposed, but powerful and influential individuals have often evaded prosecution or conviction. Under pressure from the European Union, the Government of Romania is attempting to prosecute several high-level political officials from previous governments, including a former Prime Minister.

The government announced a National Anti-Corruption Plan and passed an anti-corruption law in April 2003. The plan contains an impressive list of measures and commitments that constitute key benchmarks for judging the government's commitment to combat corruption. A national strategy to combat corruption in local public administration was adopted in June 2008. However, the implementation of these measures and commitments has lagged.

A money laundering law was passed in February 1999 and a new criminal code came into effect in 2003. With U.S. help, the Romanian government established a new institution in September 2002 - the National Anti-Corruption Prosecutors' Office (DNA) - staffed by prosecutors and police to combat corruption. In the first half of 2008, Romania also established the National Integrity Agency, which is designed to monitor financial asset flows, limit conflicts of interest, and sanction unjustified increases in the personal assets of politicians and public sector employees.

Romania is a member country of the Southeast European Cooperation Initiative (SECI), and it has signed and ratified the Agreement on Cooperation to Prevent and Combat Trans-border Crime of May 1999. Bucharest hosts the SECI Regional Center for Combating Corruption

and Organized Crime, and Romania is one of the three members of the Joint Cooperation Committee.

In March 2002, to reduce corrupt practices in public procurement, the GOR inaugurated a web-based e-procurement system which can be accessed at http://www.e-licitatie.ro/. Initiated with seed money from USAID, the system is a transparent listing of ongoing auctions and closed auctions, with the name of the winners and the closing prices made available to the public. The use of "e-licitatie" has increased government efficiency, reduced government vulnerability to corruption, and improved fiscal responsibility in government procurement. E-procurement has increased from 159 government clients and 600 suppliers in its initial months to 11,130 state entities and 12,885 suppliers. Initially used solely for basic, standard products, the program is also now applied to more complex projects.

The public procurement legislation, passed in 2006 and repeatedly amended since, establishes ex-ante controls on public procurement processes, stricter rules on eligible participants, and an appeals mechanism for complaints against the process. The National Agency for Public Procurement has general oversight over procurements and can draft legislation, but procurement decisions remain with the procuring entities.

COURT SYSTEM

The Romanian judicial system suffers from corruption, inefficiency, lack of expertise, and excessive workloads. Divergent and often contradictory rulings are not uncommon, complicating normal commercial activities. Companies routinely complain that commercial disputes take too long to resolve through the court system and, once a verdict is reached, court orders may not be enforced. Errors in court procedures, whether peripheral to the outcome or not, may result in complete retrials, further delaying verdicts. Courts are overburdened and the number of magistrates and judges is too small. Litigants in virtually all cases have a right to two appeals, contributing to clogs in court dockets throughout the system and lengthy delays. Final judgments are not binding until all appeals are exhausted. Clerks, attorneys and judges reportedly remain susceptible to bribes or other "extra-judicial" payments, most

commonly to "speed up" litigation, to assure a particular judge is assigned to a case, or to create intentional procedural errors leading to retrial.

CYBER CRIME

Romania has one of the world's highest occurrences of internet fraud. The problem is illustrated by a growing stream of complaints, some of which involve U.S. companies and their customers being defrauded of millions of dollars. The most common problems result from the use of stolen credit card numbers for the purchase of goods online, fraudulent use of on-line auction platforms such as eBay, as well as sophisticated phishing schemes to defraud customers of legitimate e-commerce companies.

Romanian hackers also have gained notoriety for hacking into U.S. companies' servers and stealing proprietary information, including customer credit card data. There have been cases where Romanian hackers have offered to sell the means by which they hacked the company's server back to the victimized U.S. company. On other occasions, hackers have attempted blackmail by threatening to release sensitive data or the means to hack the system unless a specific amount of money is paid.

An e-commerce law that defines and punishes cyber crime came into force in July 2002. Law enforcement efforts are still not commensurate with the scale of the problem, but enforcement activities have notably increased, thanks in part to substantial assistance U.S. law enforcement agencies have provided to the Romanian authorities. Several recent investigations into cyber crime, and successful arrests by Romanian authorities, may serve as a deterrent to new cyber criminals.

¶L. BILATERAL INVESTMENT AGREEMENTS

The U.S.-Romanian Bilateral Investment Treaty (BIT) on the reciprocal encouragement and protection of investment (signed May 1992, ratified by the U.S. in 1994) guarantees national treatment for U.S. and Romanian investors. It provides a dispute resolution mechanism, liberal capital transfer, prompt and adequate compensation in the event of an expropriation, and the avoidance of trade-distorting performance requirements. The U.S. government negotiated an agreement with the EU and eight accession countries, including Romania, to cover any possible inconsistencies between the pre-existing BITs and the countries' future EU obligations. This revised BIT was ratified by the U.S. Senate and Romanian Parliament

in 2004, and went into effect on February 9, 2007. Other bilateral trade agreements with third countries were terminated upon Romania's EU accession.

¶M. OPIC AND OTHER INVESTMENT INSURANCE PROGRAMS

The Overseas Private Investment Corporation (OPIC) began operations in Romania in late 1992, following the signing of an investment incentive agreement in June 1992, and continues to actively finance projects in Romania. Romania has been a member of the Multilateral Investment Guarantee Agency (MIGA) since 1992.

¶N. LABOR

Romania has traditionally offered a large, skilled labor force at comparatively low wage rates in most sectors, although the labor pool is tightening. The university system is generally regarded as good, particularly in technical fields, though foreign and Romanian business leaders have urged reform of outdated higher education curricula to better meet the needs of a modern, innovation-driven market.

The quality of work of Romanian craftsmen, engineers, and software designers is well regarded by foreign managers. With appropriate on-the-job training, local labor performs well with new technologies and more exacting quality requirements. However, labor shortages have appeared in certain sectors, resulting in strong upward pressure on wages. Before the onset of the global economic

downturn, analysts estimated that as many as 600,000 additional skilled workers would be needed in the construction industry alone. Outward labor migration and the number of students graduating without the practical skills needed in the modern workplace are considered the main causes for this trend. However, slowing growth and recession in western European countries is expected to alleviate domestic labor market shortages somewhat as some Romanian workers return from abroad.

Since the revolution of December 1989, labor-management relations have occasionally been tense as a result of economic restructuring efforts and personnel layoffs. In September 2008, unemployment officially stood at 3.9 percent, down from 4.0 percent at the end of ¶2007. Trade unions, much better organized than employers' associations, are vocal defenders of their prerogatives. The national minimum wage was recently set at RON 540 per month (about USD $180) after extensive negotiations between unions, employers associations, and government representatives. This is scheduled to increase to RON 600 (about USD $200) on January 1, 2009, provided certain favorable economic targets are reached. The government adheres to the ILO convention protecting worker rights.

According to Eurostat, Romania's minimum wage (as adjusted for purchasing power parity) of 232 points is among the lowest of all the 27 EU states, placing the country in the next to last place, ahead of Bulgaria. However, also according to Eurostat, Romania registered the biggest growth of the minimum salary in real terms, of 12.2 percent, from 2000-2008.

Employers considered the Labor Code passed in 2003 to be overly rigid for a market economy, as it made it harder for employers to dismiss employees for poor performance. In June 2005, the GOR approved several amendments to the Code which foreign investors consider to be an improvement, although it still tilts in favor of trade unions and retains provisions restricting labor flexibility.

Payroll taxes remain steep despite recently enacted reductions. As a result, an estimated 25-30 percent of the labor force works in the "underground economy" as "independent contractors" where their salaries are neither recorded nor taxed. Even for registered workers, under-reporting of actual salaries is common.

Current law makes it very costly to locate non-EU citizen expatriate staff in Romania. Foreign companies often resort to expensive staff rotations, special consulting contracts, and non-cash benefits. Work permits are now issued for a maximum one-year period (except for seasonal work) for a fee of 200 euros (payable in the RON equivalent at the daily exchange rate). These permits are automatically renewable with a valid individual work contract. Starting in 2008, 14 county offices of the Romanian Immigration Authority will be authorized to issue work permits for foreign citizens in an attempt to decentralize this activity. After January 1, 2007, foreigners from EU countries that did not impose restrictions on Romanian citizens can work in Romania without work permits. Although several companies began importing workers, mainly from Turkey, China, India, Pakistan or Moldova, most Romanian businesses are still reluctant to bring in large numbers of foreign workers. The Government plans to raise the number of annual work permits allowed from 10,000 to 15,000.

¶O. FREE TRADE ZONES

Free Trade Zones (FTZs) received legal authority in Romania in 1992. General provisions include unrestricted entry and re-export of goods and an exemption from customs duties. The law further permits the leasing or transfer of buildings or lands for terms of up to 50 years to corporations or natural persons, regardless of nationality. Currently there are six FTZs, primarily located on the Danube River or close to the Black Sea: Sulina, Constanta-Sud Agigea, Galati, Braila, Curtici-Arad, and Giurgiu.

The Administrator of each FTZ is responsible for all commercial activities performed within the zone. FTZs are under the authority of the Ministry of Transportation.

¶P. FOREIGN DIRECT INVESTMENT STATISTICS

Romania has been an attractive destination for foreign direct investment (FDI), and is currently the number one destination in Southeastern Europe. However, Romania did not become a significant target of FDI until the start of this decade, due to earlier delays in economic reforms. According to data provided by the Romanian Trade Registry, the cumulative net stock of FDI for the period from January 1990 through September 2008 totaled $28.36 billion, representing 18.9 percent of GDP. FDI in 2007 amounted to $3.3 billion (2.0 percent of GDP). Since Romanian capital exports were largely prohibited prior to capital account liberalization in 2006, the total January-June 2008 Romanian direct investments abroad were $841.5 million.

Major sectors for foreign investment include:
-- Automobile and automotive components (Renault, Daimler Benz, Ford, Siemens, Continental, Alcoa, Delphi Packard, Johnson Controls, Honeywell Garrett, Michelin, Pirelli);
-- Banking and finance (Citibank, Societe Generale, AIG, ING, Generali, Volksbank, Raiffeisen, Erste Bank, Unicredit, National Bank of Greece, Royal Bank of Scotland, Intesa Sanpaolo, Millenium Bank, GE Money);
-- Information Technology (Hewlett Packard, Microsoft, Oracle, Cisco Systems, IBM)
-- Telecommunications (France Telecom, OTE, Telesystem International Wireless Services, Airtouch-Vodafone);
-- Hotels (Hilton, Marriott, Best Western, Howard Johnson, Sofitel, Crowne Plaza, Accor, Ramada, Radisson);
-- Manufacturing (Timken, General Electric, LNM, Marco, Flextronics, Holcim, Lafarge, Heidelberg);
-- Consumer products (Procter and Gamble, Unilever, Henkel, Coca-Cola, Parmalat, Danone);
-- Retail chains (Metro, Delhaize, Carrefour, Cora, Billa, Selgros, Auchan, Kaufland).

Officially, the value of U.S. direct investment in Romania as of September 2008 was $1,055.8 million. The U.S. is the seventh-ranked foreign investor nation after the Netherlands, Austria, Germany, France, Italy, and Cyprus. U.S.-source FDI represented 3.7 percent of Romania's total. However, official statistics do not fully account for the tendency of U.S. firms to invest through foreign, especially European-based, subsidiaries, meaning the actual amount is higher. Romanian statistics also over-emphasize physical capital-intensive investments, such as brownfield investments, while de-emphasizing the impact of foreign investment in services and technology. American investment has mainly been in the telecommunications, mechanized agricultural, and consumer product sectors. Significant U.S. direct investors (including investments made through branches or representative offices) include:

- Advent Central and Eastern Europe - investment fund
- AIG - general insurance
- AIG Life - life insurance
- AIG New Europe Fund - investment fund
- Alcoa - automotive, aluminum processing
- Bunge - food
- Citibank - banking
- Coca-Cola - beverage, food
- Cooper Cameron - gas field equipment manufacturer
- Delphi Packard - automotive
- General Electric - aircraft components
- GE Money - non-banking financial services
- Hewlett Packard - IT&C equipment, services
- Hoeganess - iron powder for automotive
- Honeywell Garrett - automotive
- IBM - IT equipment
- Johnson Controls - automotive
- Kodak - film processing
- McDonald's - food
- Microsoft - software services

- New Century Holding - investment fund
- Office Depot - office and business supplies

- Oracle - IT services, consulting
- Philip Morris - tobacco products
- Procter and Gamble - consumer products
- Qualcomm - telecommunications
- Sigma Bleyzer - investment fund
- Flextronics - contract manufacturing (ICT)
- Timken - industrial bearings
- UPC - cable television operator
- Visa - financial services
- Washington International Group - engineering

In addition to these companies, the European Bank for Reconstruction and Development (EBRD) remains the single largest investor (debt plus equity) in Romania with some - $5.1 billion invested. The U.S. is a 10 percent shareholder in the EBRD.

Romania's biggest investors are:

- Holland - $6.08 billion (21.5 percent of total FDI): ICT, banking, insurance, consumer products, food;
- Austria - $3.82 billion (13.5 percent): banking, insurance, construction materials, etc.
- Germany - $3.26 billion (11.5 percent): insurance, food, machine construction, chemicals, cement, banking;
- France - $2.60 billion (9.2 percent): food, ICT, automotive, manufacturing, cement, agriculture, banking, hypermarkets;
- Italy - $1.38 billion (4.9 percent): footwear, textiles, food, banking, insurance;
- Cyprus - $1.32 billion (4.7 percent): banking, retail, services;
- U.S. - $ $1.05 billion(3.7 percent): ICT, automotive, banking, insurance, hospitality, manufacturing, consumer products.

Web Resources

Romanian Government
http://www.guv.ro

Romanian Agency for Foreign Investments
http://www.arisinvest.ro

The Authority for State Assets Recovery
http://www.avas.gov.ro/

Ministry of Public Finance
http://www.mfinante.ro

Ministry of Economy
http://www.minind.ro

International Centre for Settlement of Investment Disputes
http://www.worldbank.org/icsid

Romanian Copyright Office
http://www.orda.ro

Ministry of Communications and Information Technology
http://www.mcti.ro

National Securities Commission
http://www.cnvmr.ro

Bucharest Stock Exchange
http://www.bvb.ro

National Bank of Romania
http://www.bnro.ro

National Anti-Corruption Prosecutors' Office
http://www.pna.ro

Romanian Government's Web-Based e-Procurement System
http://www.e-licitatie.ro

Overseas Private Investment Corporation
http://www.opic.gov

Ministry of Labor, Social Solidarity and Family
http://www.mmuncii.ro